**IN THE HIGH COURT OF HIMACHAL PRADESH**
**SHIMLA**

**Civil Revision No. 71 of 2005.**

**Date of decision 17th May, 2007.**

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**Jawali Devi and others** …**Petitioners.**

**Versus**

**Salinder Singh and others** …**Respondents.**

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*Coram*

**The Hon'ble Mr.Justice Dev Darshan Sud, J.**

*Whether approved for reporting?*[1]

**For the Petitioners:** **Mr. Bimal Gupta, Advocate.**

**For the Respondents:** **Ex-parte.**

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**Dev Darshan Sud, J. (Oral).**

**This revision has been filed by the petitioners challenging the order of the learned Civil Judge (Senior Division), Nahan, rejecting an application under Order VI Rule 17 of the Code of Civil Procedure, moved by the petitioner – plaintiff for amendment of the plaint. The learned trial Court, on consideration of the facts before him, dismissed the application, holding that the amendment prayed for was not necessary and with the amendment of Order VI Rule**

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

**17, no amendment can be allowed. Learned trial Court has also made reference to Civil Revision 242 of 2003.**

**I have heard the learned counsel for the petitioners and gone through the record.**

**The learned trial Court was wrong in assuming that after the amendment of Order VI Rule 17, no amendment can be allowed. Section 16 of the Code of Civil Procedure (Amendment) Act, 2002 provides as under:**

> **"16. Repeal and savings.- (1)……..**
> **(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897, -**
> **(a)……..**
> **(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted, or as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act;"**

**In view of the express provision regarding applicability, there was as such no bar to the entertainment or the allowing of the application for amendment as the pleadings had been filed before the commencement of the Amendment Act as notified vide notification No. 80604(E) dated 6.6.2002.**

**Learned counsel has placed reliance on two judgments of the Hon'ble Supreme Court in K.Kannan v. K.Jayalakshmi (2004) 13 SCC 41 and Rajesh Kumar Aggarwal and others v. K.K.Modi and others (2006) 4 SCC 385.**

**In Rajesh Kumar Aggarwal and others v. K.K.Modi and others (supra), the Hon'ble Supreme Court held as under:**

> **"15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.**
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> **16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of the**

**pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.**

**18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of the subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and**

> **complete justice to the parties before the court.**
>
> **19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."**

**To similar effect are the observations of the Hon'ble Supreme Court in K.Kannan v. K.Jayalakshmi's case (supra).**

**These cardinal principles of law which have been enunciated by the Hon'ble Supreme Court govern all amendments to be made in the pleadings. The learned trial Court has ignored these principles. In the circumstances, this revision petition is allowed. The judgment of the learned trial Court is set aside. There shall be no order as to costs. Record of the lower Court be sent back forthwith.**

**May 17, 2007(PC). (Dev Darshan Sud),J.**